

Congress of the United States
Washington, DC 20515

August 3, 2021

The Honorable Marcia Fudge
Secretary
U.S. Department of Housing and Urban Development
451 7th Street S.W.
Washington, D.C. 20410

Dear Secretary Fudge,

We are grateful that under your leadership, the U.S. Department of Housing and Urban Development (HUD) has issued an interim final rule to restore the Affirmatively Furthering Fair Housing (AFFH) Definitions and Certifications initially outlined under the Obama Administration, and commend HUD for its work thus far to ensure the Fair Housing Act is fully realized in our federal housing practices. We write today in support of HUD's interim final rule to restore the affirmatively furthering fair housing requirement, and to highlight the importance of restoring, strengthening, and enforcing this rule to further housing justice for the Westchester communities we represent.

In Westchester County, New York ("the County") — where the majority of our constituents reside — the stubborn legacy of race-based residential segregation and continuing exclusionary housing practices have resulted in a racially unjust and urgent housing crisis. While the Fair Housing Act of 1968 outlawed overt forms of discrimination based on race, ethnicity and other identities, housing discrimination persists. The AFFH clause in the Fair Housing Act was largely unenforced for nearly half a century, during which time exclusionary zoning and a lack of affordable housing development in higher-income areas of the County exacerbated segregation.¹ Today, the New York metropolitan area is the second-most segregated region in our nation, and Westchester County is home to some of the highest real estate prices nationwide.² While the median income for white households in Westchester County is \$113,225, it is nearly half that for Black and Latinx households (\$61,406 and \$63,888).³ With an estimated affordable housing shortage of nearly 12,000 units and a lack of affordable housing units in higher-income areas, Black and Latinx households are in many cases being excluded from key opportunities and resources available in wealthier neighborhoods, such as well-funded, high-quality schools.⁴

¹ Noah Kazis, *Ending Exclusionary Zoning in New York City's Suburbs*, NYU Furman Center (Nov. 9, 2020), <https://furmancenter.org/research/publication/ending-exclusionary-zoning-in-new-york-city8217s-suburbs>

² William H. Frey, *Black-White Segregation Edges Downward Since 2000, Census Shows*, Brookings Institute (Dec. 17, 2018), <https://www.brookings.edu/blog/the-avenue/2018/12/17/black-white-segregation-edges-downward-since-2000-census-shows/>, Westchester County Housing Needs Assessment (Nov. 2019), <https://homes.westchestergov.com/images/stories/HNA/1125fullrep.pdf>.

³ U.S. Census Bureau: American Community Survey, 2015-2019.

⁴ Westchester County Housing Needs Assessment (Nov. 2019), <https://homes.westchestergov.com/images/stories/HNA/1125fullrep.pdf>.

Westchester County has recently finished implementing the terms of a settlement with the federal government to build at least 750 new affordable housing units that affirmatively further fair housing (“AFFH units”).⁵ The settlement is the result of litigation over Westchester’s housing segregation. The litigation began over 14 years ago, when the Anti-Discrimination Center of Metro New York (“ADC”) sued Westchester County under the False Claims Act in the United States District Court for the Southern District of New York. The ADC alleged that Westchester County had falsely certified it was in compliance with the Fair Housing and Community Development Act, when in fact the County had failed to meet the statute’s requirements to analyze impediments to fair housing based on race or municipal resistance and take appropriate steps to overcome those impediments.⁶

Under this settlement, Westchester County agreed to build at least 750 AFFH units and to locate 630 of those units in municipalities with a Black population below three percent and a Hispanic population below seven percent, and on census blocks with less than 20 percent Black and Hispanic populations.⁷ The County also agreed to facilitate the development of affordable AFFH units by creating a model inclusionary housing ordinance, providing development incentives to the municipalities most in need of affordable AFFH units, and adopting additional reforms necessary to affirmatively further fair housing in the County.⁸ The County’s delays in compliance were driven in large part by opposition from then-County Executive Robert Astorino, who was committed to fighting the terms of the settlement. “Just because HUD bureaucrats have been critical of the county’s analysis of impediments and local zoning doesn’t mean HUD is right or that HUD’s opinions carry the weight of law,” Astorino wrote in a 2015 op-ed.⁹ Fortunately, the administration of current County Executive George Latimer in Westchester County has made great strides towards fulfilling the County’s obligations.

The availability of fair and affordable housing should not rest on the political whims of those in power. Securing the right to fair, affordable housing requires renewing and vigorously enforcing the AFFH rule — ensuring that all municipalities fulfill the law’s promise of “fair housing throughout the United States.”¹⁰ In addition to the measures already outlined in the AFFH interim final rule, we encourage HUD to ensure there is also an emphasis on technical assistance for local municipalities and regions; fair housing planning; and a focus on quality and safe housing in the final AFFH rule and in fair housing work at HUD under the Biden Administration.

- **Providing expanded technical assistance for local municipalities and regions.**

Technical support for local municipalities to identify resources available for promoting fair housing and equip local leaders with strategies for public education surrounding fair housing goals will allow for a strong realization of the AFFH rule. We are pleased to see

⁵ Stipulation and Order of Settlement and Dismissal at ¶ 7, *United States ex rel. Anti-Discrimination Center of Metro New York v. Westchester Cnty.*, No. 06-CV-2860 (S.D.N.Y. Aug. 10, 2009).

⁶ Complaint, *United States ex rel. Anti-Discrimination Center of Metro New York v. Westchester Cnty.*, No. 06-CV-2860 (S.D.N.Y. Apr. 12, 2006).

⁷ *Id.* at ¶ 7(a).

⁸ *Id.* at ¶ 25.

⁹ Robert P. Astorino, *View: Court ruling a victory for Westchester*, Lohud (Feb. 27, 2015), <https://www.lohud.com/story/opinion/contributors/2015/02/27/court-ruling-hud-victory-westchester/24133711/>.

¹⁰ See 42 U.S.C. § 3601.

that the interim final rule includes the reestablishment of technical assistance to ensure compliance with the AFFH obligations and encourage HUD to pursue further technical assistance efforts to support fair and affordable housing development at the local level. In Westchester County, the need for technical assistance to localities took several forms during the development of the AFFH units. There was a strong need and desire from localities to learn how to best access and maximize federal funds for affordable housing development as well as for technical support in the crafting of zoning reform legislation and model ordinances. As outlined in the Westchester Housing Needs Assessment of 2019, “there is a high demand for services, technical assistance, capacity building and funding across the entire housing spectrum,” which can be used to help municipalities draft model zoning ordinances, facilitate education sessions, and overcome barriers to affordable housing development.¹¹

- **Planning for effective fair housing implementation.** The rigorous planning process required through the 2015 AFFH Rule meaningfully increased compliance, and developing a plan for meaningful action alongside community members is an important step toward realizing fair housing goals.¹² For this reason, we believe it is important for jurisdictions to certify they have a publicly available plan to meaningfully further fair housing goals and, on the contrary, that no elements of that plan are inconsistent with fair housing goals. We encourage HUD to incorporate this certification language into their final rule. When planning for the location and type of fair and affordable housing units, HUD should encourage localities to first assess a community’s particular affordability needs, household size, and locational needs.
- **Ensuring AFFH plans promote access to a quality education.** We encourage HUD, in collaboration with the U.S. Department of Education, to develop joint guidance that helps ensure federally-subsidized affordable housing developments in higher-income neighborhoods developed in conjunction with AFFH activities are sited in locations that will allow students to attend well-funded schools that ensure students have the holistic support and learning opportunities needed to learn and grow. Given the incongruous geographies of towns, cities, and their school districts, it is essential that plans for new fair and affordable housing developments at the local level are developed carefully to ensure affordable housing for families fall within the catchment area of high-quality school districts. Given the intertwined nature of housing discrimination and education segregation, it is important for fair housing planning to incorporate explicit analyses of educational access.
- **Focus on quality and safe housing for all.** While federal fair housing policy primarily focuses on breaking down barriers to integration, it is essential that HUD and Congress also work together to address issues of housing quality. Even in diverse jurisdictions, Black and Latinx communities are too often relegated to second-tier, unsafe living

¹¹ Westchester County Housing Needs Assessment (Nov. 2019), <https://homes.westchestergov.com/images/stories/HNA/1125fullrep.pdf>.

¹² Justin Steil & Nicholas Kelly, *The Fairest of Them All: Analyzing Affirmatively Furthering Fair Housing Compliance*, 29 Housing Policy Debate 85 (Dec. 17, 2019).

conditions and segregated in certain census tracts.¹³ Analyses that focus only on jurisdiction-level demographics without also incorporating equity assessments of smaller geographies and housing quality assessments will ultimately leave us short of housing justice for all. In the wake of a pandemic that underscored the dangers of overcrowded and unsafe living conditions, we must work to integrate a more granular focus on housing quality into our fair housing work.

Westchester's history of segregation continues to harm our constituents, and those harms are sustained by entrenched municipal laws and practices that remain on the books, a lack of fair housing enforcement, and a significant underfunding of affordable and public housing development at the federal level.¹⁴ It will take further efforts at the local, state, and federal levels to not only recommit to dismantling segregation, but deliver on these ideals in the communities we represent. All of us benefit from diverse and inclusive communities, and advancing housing equity should be at the center of HUD's agenda.

We look forward to working with you towards these goals in our districts and across the country. Together, we can build a future in which everyone in the United States has a safe and stable place to live in a welcoming community. Thank you for your attention to this important matter.

Sincerely,



Mondaire Jones
Member of Congress



Jamaal Bowman, Ed.D.
Member of Congress



Sean Patrick Maloney
Member of Congress

¹³ U.S. Census Bureau. American Community Survey: 2015-2019.

¹⁴ Nikole Hannah-Jones, *Soft on Segregation: How the Feds Failed to Integrate Westchester County*, ProPublica (Nov. 2, 2012), <https://www.propublica.org/article/soft-on-segregation-how-the-feds-failed-to-integrate-westchester-county>.